documentary which, in our considered judgment, are sufficient and conclusive as to entitle the learned Judge to make a proper inference. It was in the circumstances the only reasonable and irresistible inference. He heard and saw the witnesses and was in a better position to determine their credibility and reliability. The appellant was cross-examined on the matter in his presence. He had made proper use of that advantage in considering the evidence as adduced. In the circumstances, it is not proper for us to upset his finding. We agree with him that the respondent in the court below had proven that the accident was caused to some extent by the fault of the appellant.

We therefore dismiss the appeal with costs and confirm the judgment of the court below.

Deposit to the respondent on account of taxed costs.

Appeal dismissed.

Solicitors: *V.P. Nathan & Partners; Sandu & Co.*

KRISHNAMURTHY & ANOR. v. MALAYAN FINANCE CORPORATION BHD.

[S.C. (Salleh Abas L.P., Seah & Syed Agil Barakbah S.C. JJ.) December 2, 1985 & February 19, 1986]

[Kuala Lumpur – Supreme Court Civil Appeal No. 125 of 1985]

Practice and Procedure – Claim on guarantee in connection with sale of motor cars under hire-purchase agreement – Application for summary judgment – Application to sign final judgment for sum less than amount claimed – Credit given for value of motor vehicles repossessed – Delay in application – Satisfactory explanation given – R.H.C. 1980, O.14.

In this case the respondents had sued five defendants including the two appellants for the recovery of the sum of $66,303.89 which arose in connection with a business deal in which the respondents agreed to finance the sale of motor vehicles by N.K.M. Credit Sdn. Bhd. (the first defendant) to members of the public under hire purchase agreements. The other four defendants (including the two appellants) guaranteed to indemnify the respondents against any losses incurred or suffered. The respondents brought the action on December 3, 1983. The first defendant did not enter an appearance and judgment in default was entered against them. The other defendants entered appearance at different dates, the present appellants entering appearance on April 4 & 10, 1984 respectively. The respondents applied for final judgment on May 31, 1984. The sum for which judgment was sought to be signed was smaller than that originally claimed, as credit had been given for the value of vehicles repossessed. The defendants objected to the application for final judgment on the grounds: (1) that the amount claimed differed from the amount for which judgment was sought to be signed; (2) that there was delay in applying for the judgment. The Senior Assistant Registrar accepted both the objections and dismissed the respondents' application. On appeal to the High Court, the decision of the Senior Assistant Registrar was reversed. The two appellants appealed to the Supreme Court.

Held: (1) the difference between the amount claimed and the amount to be signed in the judgment was fully explained by the respondents to the effect that credit had to be given for the value of the cars which the respondents repossessed between the date of the writ and the date of the summons in chambers. There was no need to amend the statement of claim for the making of the adjustment;

(2) the application for Order 14 judgment must be made after an appearance had been entered and it could be made either before or after the delivery of defence provided that where it was made after delivery of defence, the plaintiff must explain the delay. In this case no defence was ever filed by the appellants and the other defendants. The delay in this case was not such as to inhibit the court from granting the respondent's application for an Order 14 judgment.

Cases referred to:

(1) *McLardy* v. *Slateum* (1890) 24 Q.B.D. 504.
(2) *Comptroller-General of Inland Revenue, Malaysia* v. *Weng Lok Mining Co. Ltd.* [1969] 2 M.L.J. 98.
(3) *Societe des Etains de Bayas Tudjuh* v. *Woh Heng Mining Kongsi* [1978] 2 M.L.J. 267.

SUPREME COURT.

Miss Bella Loo for the appellants.
K. Anandham for the respondents.

Cur. Adv. Vult.

Salleh Abas L.P. (delivering the Judgment of the Court): In the court below the respondents sued five defendants including the two appellants in this appeal for the recovery of a sum of $66,303.89 which arose in connection with a business deal in which the respondents agreed to finance the sale of motor vehicles by N.K.M. Credit Sdn. Bhd. (the first defendants) to members of the public under hire purchase agreements. As part of the deal the other four defendants (including the two appellants) guaranteed to indemnify the respondents against any losses incurred or suffered. This suit was commenced on December 3, 1983.

The first defendant did not enter an appearance and so a judgment in default was entered

against them. The other defendants had all entered their appearances on diverse dates. The present appellants entered theirs on April 4 and 10, 1984 respectively.

On April 17, 1984 upon a request by the defendants' solicitors, the respondents' solicitors supplied to the former copies of documents relating to the claim.

On May 31, 1984 the respondents took out a summons-in-chambers under Order 14 against the four defendants to sign a final judgment but the sum to be signed was a smaller sum *i.e.* $66,303.89. The reason for this reduction was fully explained by the respondents to be due to the fact that the value of vehicles repossessed in the meantime had to be taken into account.

The summons-in-chambers was heard by a Senior Assistant Registrar. Two objections were raised by the defendants. First, no summary judgment under 0.14 could be given when the amount claimed differed from the amount to be signed. Secondly, the respondents were not entitled to the summary judgment because they were guilty of delay in applying for it. The Senior Assistant Registrar accepted both the objections and hence dismissed the respondents' application.

On appeal to the High Court, V.C. George J. reversed the decision of the Senior Assistant Registrar.

Only two defendants appeal to us, namely defendant No. 3 and defendant No. 4.

We are of the view that there is no merit in this appeal and that it should be dismissed.

In the first place, as regards the objections to the difference between the amount claimed and the amount to be signed in the judgment, we wholly agree with the view expressed by George, J. in his grounds of decision in that the matter was fully explained by the respondents to the effect that credit had to be given for the value of cars which the respondents re-possessed between the date of the writ and the date of the summons-in-chambers. We do not see any need to amend the Statement of Claim for the making of this adjustment.

In the second place the law as to the time when an application for an Order 14 judgment could be made is settled law. The application must be made after an appearance has been entered and it could be made either before or after the delivery of defence provided that where it was made after the delivery of the defence, the plaintiff must explain the delay. If this explanation was not accepted by the court no Order 14 judgment could be signed. This is the *ratio decidendi* in *McLardy* v. *Slateum.*[1] This case was followed by Raja Azlan Shah, J. (as he then was) in *Comptroller-General of Inland Revenue, Malaysia* v. *Weng Lok Mining Co. Ltd.*[2] and Abdoolcader, J. (as he then was) in *Societe des Etains de Bayas Tudjuh* v. *Woh Heng Mining Kongsi.*[3]

In the present appeal no defence was ever filed in by the appellants and other defendants. All that the respondents did before applying for the judgment was to await the next move to be made by the appellants and their co-defendants after appearances had been entered by them. We do not think that the delay in this case is such as to inhibit the court from granting the respondents' application for an Order 14 judgment.

We therefore dismiss the appeal with costs and direct that the deposit be paid to the respondents on account of taxed costs.

Appeal dismissed.

Solicitors: *Ng Ek Teong & Partners; Skrine & Co.*

A.R. FERNANDEZ & ORS. v. NATIONAL UNION OF BANK EMPLOYEES

[S.C. (Seah, Syed Agil Barakbah & Wan Hamzah S.C.JJ.) May 2, 1985 & March 17, 1986]

[Kuala Lumpur – Federal Court Civil Appeal No. 325 of 1983]

Practice and Procedure – Trade Union – Application for interlocutory injunction – Arbitration – Whether High Court has power to make interim injunction – Whether party ready and willing to do things necessary for proper conduct of arbitration – Trade Union Act (Act 262), ss. 40, 44(1) & 46 – Arbitration Act (Act 93), ss. 6, 13(6) & 321.

Trade Union – Application for injunction – Arbitration – Trade Union Act (Act 262), ss. 40, 44 & 46.